

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

Due : 01.30.06
mm jj an

INSCRIPTION

VALIDATION

To:
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PROPRIÉTÉ INTELLECTUELLE

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing 19 July 2005 (19-07-2005)
(day/month/year)

Applicant's or agent's file reference
GB/11168.252

FOR FURTHER ACTION
See paragraph 2 below

International application No.

PCT/CA2005/000467

International filing date (day/month/year)

30 March 2005 (30-03-2005)

Priority date (day/month/year)

30 March 2004 (30-03-2004)

International Patent Classification (IPC) or both national classification and IPC
IPC7 G02B-21/06, G01N-21/84

Applicant
MCGILL UNIVERSITY ET AL

1. This opinion contains indications relating to the following items :

- | | |
|--|--|
| <input checked="" type="checkbox"/> Box No. I | Basis of the opinion |
| <input type="checkbox"/> Box No. II | Priority |
| <input type="checkbox"/> Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI | Certain documents cited |
| <input checked="" type="checkbox"/> Box No. VII | Certain defects in the international application |
| <input checked="" type="checkbox"/> Box No. VIII | Certain observations on the international application |

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/CA
Canadian Intellectual Property Office
Place du Portage I, C114 - 1st Floor, Box PCT
50 Victoria Street
Gatineau, Quebec K1A 0C9
Facsimile No.: 001(819)953-2476

Date of completion of this opinion

19 May 2005 (19-05-2005)

Authorized officer

David E. Green (819) 994-8213

Box No. I **Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of:

☒ the international application in the language in which it was filed

☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of :

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ on paper

☐ in electronic form

c. time of filing/furnishing

☐ contained in the international application as filed.

☐ filed together with the international application in electronic form

☐ furnished subsequently to this Authority for the purposes of search.

3 ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statement that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments :

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>1-22</u>	YES
	Claims <u>None</u>	NO
Inventive step (IS)	Claims <u>1-22</u>	YES
	Claims <u>None</u>	NO
Industrial applicability (IA)	Claims <u>1-22</u>	YES
	Claims <u>None</u>	NO

2. Citations and explanations :

D1 US6614532 2003-09-02 G01N-21/00 Power et al.

1. Novelty

Document D1 is the closest prior art. This document discloses the basic principles of light profile microscopy, but does not disclose the use of anamorphic optical means for producing an illumination pattern of a source beam with an elliptical profile. As such, all of claims 1-22 are considered to be novel, in accordance with PCT Art. 33(2).

2. Inventive Step

Nothing in D1 would suggest the use of the anamorphic optical means as discussed above, and as such, all of claims 1-22 are considered to involve an inventive step, in accordance with PCT Art. 33(3).

3. Industrial Applicability

All of the claimed subject matter clearly has industrial applicability, in accordance with PCT Art. 33(4).

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted :

In claim 21, lines 3-4, the term "an image radiation" has already been introduced in the claims. As such, this term should use the definite article "the", to avoid confusion with the earlier usage of this term, in accordance with PCT Art. 6.

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made :

In light of the document D1, the independent claims 1 and 20 should be cast out in the two-part form, in accordance with PCT rule 6.3(b)(ii). The preambles of the claims as they are currently written indicate that they are directed to an apparatus and method "for illuminating a test material", when in fact they recite several features and method steps that are in fact a part of the apparatus and method for light profile microscopy itself, as shown in D1, rather than solely a method of illumination. The claims would read better as being directed to an apparatus or method of light profile microscopy, *characterized by* the means or methods of illuminating the sample.